LEGAL ASSESSMENT
USAID/CAUCASUS
GEORGIA
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Primary Authors:

Gene Gibson, USAID/Caucasus
Claudia Dumas, EE/DGSR/ROL
Robyn Goodkind, Management Systems International

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LIST OF ACRONYMS

ABA/CEELI	American Bar Association/Central and Eastern European Legal Initiative
CL	Commercial Law
COE	Council of Europe
COJ	Council of Justice
DG	Democracy and Governance
DOJ	United States Department of Justice
ER	Economic Restructuring
EU	European Union
FSU	Former Soviet Union
GYLA	Georgia Young Lawyers Association
IDP	Internally Displaced Person
JTC	Judicial Training Center
MOI	Ministry of Interior
MOJ	Ministry of Justice
NIS	Newly Independent States (of the former Soviet Union)
NGO	Non-governmental Organization
ROL	Rule of Law
SMW	Small and Medium Size Enterprises
S.O.	Strategic Objective
TOT	Training Of Trainers
UN	United Nations
USG	United States Government
UNDP	United Nations Development Program
WB	World Bank
WTO	World Trade Organization

I. INTRODUCTION

A. Objective of Assessment

The purpose of this assessment is to provide USAID/Caucasus/Tbilisi with information, analysis, and recommendations that can be used to develop its legal reform activities for Georgia from FY2000 to FY2003. The assessment focuses on a comprehensive range of sub-sectors identified in part by the Strategic Plan for Georgia that USAID prepared and approved in 1999. Two general substantive sections comprise this assessment: Rule of Law (ROL) and Commercial Law, the latter limited to those issues directly related to legal reform. Other matters related to economic growth are not covered. The assessment attempts to demonstrate the synergy between the two sections. Discussion and analysis on issues related to anti-corruption are infused throughout both sections of the assessment.

B. Background and Context

Georgia's legal reform progress and priorities must be seen in the context of the country's remarkable recent history. After its breakaway from the Soviet Union, the former republic endured four years of violent ethnic conflict and political chaos. In 1995, Georgia began in earnest the arduous task of building a democracy. Like all former Soviet republics, Georgia has found this process tedious and complex, and one that cannot be completed quickly or painlessly. Persistent internal and regional tensions have made the endeavor especially trying for Georgia, a country of less than 5.6 million people who represent at least eight distinct ethnic groups. Nevertheless, in the past five years, Georgia has caught up with, if not surpassed, most of its neighbors in advancing toward a free-market democracy.

Accomplishments have been impressive in the area of legal reform. In 1995 a new Constitution was adopted and later that year presidential and parliamentary elections resulted in the installment of a core cadre of reformers led by President Eduard Shevardnadze. In 1999, parliamentary elections were again held, and presidential elections were held April 9, 2000. Parliament has enacted approximately 785 new laws, including a Civil Code, Civil Procedure Code, Criminal Code, Criminal Procedure Code, Administrative Code, and the commercial legislation needed for accession to the World Trade Organization (WTO). Due to an unprecedented merit based selection process 184 new judges have been seated, judicial salaries have dramatically increased, and the entire court administration system has been restructured and now includes an appellate court system.

Despite these accomplishments, much work remains before firmly establishing the rule of law in Georgia. The political will needed to sustain Georgia's momentum is critical. While Georgia's reform-minded leaders are credited with impressive results to date, the political environment is volatile and unpredictable.

After several years of intensive activity, by early 1999 the reform process had generally began to lag. In response, the USG and the Government of Georgia (GOG) launched a high profile initiative known as the Five-Point Program to serve as a catalyst for reinvigorating the reform movement. As a consequence of the Five-Point Program, judicial reform initiatives were accelerated and several pieces of critical legislation designed to facilitate the fight

against corruption were passed. As a follow-up to the Five-Point Program, the Four-Point Program was launched in February 2000. The latter program focuses on: 1) anti-corruption, 2) revenue enhancement, 3) civil service and administrative reform, and 4) improving the budget and controls over government expenditures.

The recent transformation of the Supreme Court further demonstrates the fluid environment for legal reform. Lado Chanturia, one of the leading advocates for judicial reform and former Minister of Justice, was appointed Chairman of the Supreme Court in June 1999. In addition, 16 new reform-oriented justices have been appointed to the Supreme Court. Moreover, a host of new actors will appear as the decentralization process accelerates.

Nevertheless, ongoing support by reformers, in the executive branch and parliament, is not guaranteed. Continued commitments to reform are especially critical in politically sensitive sectors such as law enforcement and in particular the procuracy, as well as other bureaucratic apparatuses, especially in view of several recent anti-reform actions. For example, in a 1999 session, parliament weakened a progressive Criminal Procedure Code with amendments that repealed important human rights protections. Even more disturbing was an April 1999 amendment to the Law on Courts of General Jurisdiction (Law on Courts) reinstituting the use of lay judges – unqualified, politically influenced vestiges of the Soviet era. Such lay judges would defeat the purpose of having a merit-based selection process for judges. Fortunately, this amendment was repealed. But now judicial reform is threatened by late salary payments. These examples demonstrate the fragility of judicial reform.

The stability of the state of Georgia itself poses another threat. The critical assumption to USAID's Strategic Plan for Georgia that a general state of peace will endure, cannot be taken for granted or underestimated. Moreover, the economy is in dismal shape.

C. Assessment Overview

The assessment confirmed that Georgia has made impressive strides in legal reform, particularly in the development of a legislative framework and judicial reform.[1] Such advances, unusual for the Former Soviet Union (FSU), reflect the reform-minded leadership of parliament, the judiciary and some officials in the executive branch, and the openness with which Georgian reformers have welcomed support from the west. The reformers have pushed for integration with the west by joining the Council of Europe and the WTO.

Still, legal reform is incomplete. Numerous gaps and inconsistencies exist in the laws and a few critical pieces of legislation are missing. While the quality of legal drafting has improved, laws often lack the requisite specificity for implementation and conversely in many instances prove overly detailed and restrictive. Parliament will need to become more vigilant in conducting oversight to determine if the laws are being implemented and if not, identify and correct the impediments. Furthermore, the public needs to have greater input into parliament's and the executive branch's decision-making process.

[1] For additional information on judicial reform see *Georgia Judicial Assessment*, World Bank Report No. 17356-GE, April 10, 1998. In particular, this report provides a detailed discussion of the court system.

Executive branch authorities will need to focus on drafting and promulgating implementing regulations[2] and developing the capacity to ensure compliance with the laws and regulations. The new Administrative Code will provide a valuable legal tool in this process, but the implementation of this Code constitutes a potentially overwhelming task. The Administrative Code, with its Freedom of Information section, will provide one of the strongest weapons in the fight against corruption by providing transparency and accountability.

Georgian reformers and the donor community have, with significant success, focused on judicial reform and in particular, the judicial qualifications exams. But results are at risk if judicial reform does not continue, and if the needs of other legal institutions, specifically the procuracy and the Bar, are not addressed. The reform of these institutions presents a huge undertaking. The assessment identifies the assistance provided by other donor programs, in particular, the World Bank (WB), the European Union (EU), the United Nations Development Program (UNDP) and the United States Department of Justice (DOJ). Now more than ever, donors must coordinate their efforts in order to leverage resources so as to optimize the comparative advantage of each donor (see *Annex A, Assistance for Legal Reform in Georgia*).

This assessment presents extensive recommendations considered necessary for the continued success of Georgia's legal reform movement. However, the assessment recognizes that the recommendations are beyond the manageable interest of one implementing organization or even one donor. In order to sustain existing accomplishments and undertake critical new areas of reform, it will require expanded assistance. Despite progress to date, a serious gap exists between institutional reform and public access to justice. An overarching theme that emerges from the assessment is that the public needs to be aware of and tangibly benefit from legal reform, and legal institutions need to have the capacity to respond to this demand. This must happen in Tbilisi and regions outside of Tbilisi. USAID's comparative advantage in the civil society sector can prove paramount to reaching this objective.

The Mission will require flexibility to implement its program. As indicated in the background discussion above, the legal and political environment remains fluid. The very real possibility exists of governmental changes that will positively or negatively affect the constituencies for legal reform. President Shevardnadze's political party did well in the October 1999 parliamentary elections. But while many reform-oriented MPs were elected, they did not always receive important committee assignments. The Five-Point Program and now the Four-Point Program demonstrate the need for a flexible and rapid response approach.

D. Methodology and Team

Recognizing the integrated nature of legal reform activities, the Democracy and Governance (DG) Office and the Economic Restructuring (ER) Office prepared a joint legal assessment. The assessment has two sections. The first section examines ROL issues as identified in USAID/Caucasus Strategic Objective (S.O.) 2.2: *Legal Systems that Better Support Implementation of Democratic Processes and Market Reform*. The second section assesses commercial laws germane to S.O. 1.3, *Accelerated Development and Growth of Private Enterprise.* Legal issues pertaining to anti-corruption are integrated into both sections. The

[2] In Georgian legal parlance, regulations are referred to as subordinate normative acts or administrative acts.

Mission Strategy does not have a specific anti-corruption S.O., since anti-corruption components are incorporated into all of the Mission's strategic frameworks. The final section, Recommendations, provides concrete suggestions for future legal reform activities.

The assessment examines progress to date, targets priority needs, identifies legal and institutional impediments to legal reform, determines the extent to which donor assistance addresses these needs and proposes recommendations for future activities. Legal and institutional strengths, weaknesses, and opportunities are assessed.

Gene Gibson, ROL Adviser, DG Office, USAID/Caucasus, served as Team Leader and assisted with the rule of law assessment. Robyn Goodkind, an attorney and senior associate with the consulting firm Management Systems International, had primary responsibility for the rule of law section and was assisted by Ketty Makharashvili, ROL PMS, DG Office, USAID/Caucasus. Claudia Dumas, the senior ROL attorney at EE/DGSR/ROL, had primary responsibility for the commercial law section. Ms. Dumas was assisted by James Watson, Deputy Director ER Office, USAID/Caucasus, and Geoff Minott, Tax & Fiscal Specialist, ER Office, USAID/Caucasus. Carol Horning, Regional Chief, DG Office, USAID/Caucasus, contributed to the discussion on anti-corruption issues. The assessment was conducted in Georgia during the period September and October 1999, and revised and updated in March 2000. More than 100 people in Georgia were interviewed for the assessment, including other donor representatives and Georgian partners and stakeholders in four regions: Tbilisi, Rustavi, Gori, and Kakheti (see *Annex B, Persons Met*).

II. RULE OF LAW

A. Introduction and Overview

The ROL analysis in this assessment addresses the progress to date and priority needs for the development of a legal framework in Georgia that will provide the public with access to effective mechanisms for justice.

In a society based on the rule of law, citizens expect the state to protect their legal rights. Citizens understand their rights under law; they know how to seek redress for grievances; they have access to competent legal counsel; they receive due process; their human rights are respected; and they have confidence that the judiciary will provide fair and predictable resolution of their legal problems. This public trust occurs only when legal institutions and mechanisms function properly. Laws must be well-drafted; regulations to implement the laws must be in place; administrative processes and procedures must be available and functional; courts must have sufficient capacity, knowledge, and integrity; investigative bodies must be accountable; judgements must be enforced; lawyers must be qualified; and civil society must be an active participant, on behalf of the public, in government processes.

As this assessment describes, Georgia has made progress towards establishing a society based on the rule of law. However, the assessment focuses less on accomplishments and more on the work that remains. In order to determine how USAID can best assist Georgians in the legal reform process, this assessment attempts to highlight the most important needs against which tangible impact can be achieved in a four-year period. The intention is to build on results reached to date.

A few common themes help to set the stage. First and foremost, the public remains skeptical that the State protects individual interests. While a few individuals expressed confidence in legal institutions, the team concluded that most Georgians are still unaware of their legal rights, distrust legal regimes, avoid formal avenues of resolution, and are unimpressed with the progress of reform. This lack of confidence in the system helps to sustain the cycle of corruption that Georgians characterize as a tradition of "taking care of one's own" in a society where no assurance exists that civil servants will serve the public. This view was borne out in a WB focus group.[3]

The gap between legality and reality that characterizes much of Georgia's legal framework also helps explain public skepticism. A new Constitution, hundreds of new laws, and countless amendments have been enacted, but many laws are either vague or over-complicated, and implementation and compliance are poor. In many cases, regulations have not been passed, and a source at the Department for Enforcement of Judgments reports that 70% of civil and administrative judgements go unenforced.

Legal professionalism poses another area of concern. Recent reforms have produced a more competent judiciary, but judges require additional training and the Law on Judicial Discipline, passed in February 2000, needs to be implemented. The legal profession is wholly unregulated, but parliament plans to hold hearings on a draft Law on the Bar in April 2000. The procuracy and other law enforcement agents have wide and unchecked authority and police abuse is rampant. Administration of justice is often conducted by a network of self-interested public officials concerned with neither the defendant nor the victim.

The salary structure for civil servants slows reform efforts. Judicial salaries have been significantly increased, but the government's payment record is spotty. Procurators make approximately 30 Lari per month, and police even less. The government has promised to raise procurator salaries and judicial salaries again, but cynicism abounds as to the political will and the availability of financial resources to implement such pledges. Payment of an adequate salary is one of the corner-stones of judicial reform.

Compared to just five years ago, a strong civil society now exists with an active NGO community. Yet legal, cultural, and economic impediments frustrate NGO efforts. Building civil society is an essential ingredient in the development of ROL because NGOs can serve as the link between citizens and the legal institutions they need to trust. Donors often provide "capacity-building" support to NGOs, but legal advocacy training and training in substantive legal matters are also needed.

To date, USAID's ROL activity in Georgia has focused on strengthening institutions, such as the judiciary, and the legislative and executive branches; providing assistance to parliament with assessments of draft laws; and working with NGOs on advocacy and media activities. In USAID's new Strategic Plan for Georgia, SO 2.2 seeks to continue support to legal institutions but places new emphasis on generating the public demand for effective performance and transparency of such institutions. Thus, access to justice represents a

[3] As part of its judicial reform project, the WB will conduct a series of annual focus groups with judges, lawyers, the business community, public officials and recent court users.

guiding theme in this assessment and the recommendations that follow. The mission-wide priority of extending impact to regions beyond the capital is also addressed.

B. Judiciary

1. Progress to Date

In the FSU, Georgia has taken the lead in instituting serious judicial reform measures. This progress is especially impressive given that the judiciary in Soviet society suffered from poor working conditions and inadequate training. Moreover, the concept of an independent judiciary was nonexistent. Telephone justice was common and the role of the judiciary was to rubberstamp policies and decisions for the bureaucracy – in particular, the procuracy and the communist party. Consequently, the populace in Georgia and other former Soviet republics is not accustomed to judges having the independent authority to administer justice. On a scale with other legal professionals during the Soviet period, judges had the least prestige and influence and procurators the most. Not surprisingly, all of these conditions contributed to a state of chronic corruption – affecting not just the judiciary but all the public and private sector actors who regularly interact with the judiciary.

Thus, Georgia has faced three central challenges in its judicial reform efforts: first, to create a legal and policy environment that empowers the judiciary to do its job; second, to assure that the judiciary is qualified; and third, to generate public trust in the judiciary. The absence of any one of these conditions will render the judiciary ineffective.

The Law on the Courts, enacted in 1997 and amended several times, launched a series of judicial reform measures. First, it provided for the establishment of a Council of Justice (COJ), a tripartite body charged with overseeing judicial reform. Previously, the Ministry of Justice (MOJ) had supervised the judiciary. Under the law, one of the COJ's primary duties is to implement a process for judicial qualification. With assistance from USAID, the COJ designed and now implements a judicial qualification exam and vetting process that has resulted in the appointment of 184 newly qualified judges. Salaries for the new judges have been increased from approximately 50 Lari up to 500 Lari (U.S. $267), although the government's payment record is poor.

Another important development, pursuant to the Law on the Courts, has been the establishment of two District Courts in Tbilisi and Kutaisi with appellate chambers. The Autonomous Republics of Abkhazia and Adjaria have their own Supreme and Constitutional Courts. The jurisdictional authority between these Courts and the national Supreme and Constitutional Courts in Tbilisi has not been fully defined.

In addition to USAID support, these fundamental reforms are supported by several donor-sponsored activities. The WB has taken the lead in providing assistance for court administration, case processing and courthouse rehabilitation. The EU, WB and Soros have extensive judicial training programs with the Judicial Training Center (JTC). Soros is also considering working with the Tbilisi State University Law School. UNDP provides assistance to the Ombudsman Office, Parliament's anti-corruption committee and the

Constitutional Court's public outreach program. The EU and UNDP have a variety of gender legal activities.

Overall, these advances have helped curb corruption in the judicial sector, improve the competency of judges, and contribute to a more independent judiciary. The judicial qualification and merit selection process, which is now nearly sustainable under the auspices of the COJ, is recognized as one of the most successful judicial reforms in the FSU. Legal professionals in Georgia note that many of the newly seated judges are more efficient, diligent, and knowledgeable, compared to the old judges, particularly in the capital.

2. Key Constraints and Priority Needs

Reform of the judicial sector is incomplete, and progress to date is at risk without additional action. While judicial reform has received widespread publicity, the public remains skeptical and is waiting to see results and how judicial reform improves their lives. It will take time before the public believes that the judiciary has the mandate and the ability to administer justice. Moreover, the qualification exams, while an important first step, are only the beginning in a long process of judicial reform. The needs discussed below attempt to capture the key constraints to a functional and independent judiciary.

a. Judicial Independence

Georgians and donors widely use the term "judicial independence," but no clear criteria or common definition applies. Western definitions of judicial independence include a complex set of elements.[4] Developing a common definition of judicial independence in Georgia would allow Georgians and their donor counterparts to work with a uniformly understood set of goals and criteria. This need has become especially pronounced in the past year as judicial reform has received increased attention and, in the process, several institutions now claim responsibility for various issues concerning the judiciary (see discussion in II(B)(3) below on judicial institutions).

Georgian judges typically describe independence as the ability and will to decide cases on their merits without undue influence. In this regard, the GOG's failure to pay an adequate salary in a timely manner poses a grave threat to judicial independence, since judges could become dependent on rent seeking. Furthermore, while many judges would not succumb to bribe, they could feel pressured by extensive family and clan networks. In fighting corruption, addressing conflict of interest issues will prove critical.

Article 82(3) of the Georgian Constitution provides for judicial independence, but Article 91(1) of the Constitution provides that the Procurator's Office is also part of the judiciary. This has led to confusion; several judges interviewed said that as a practical matter the procuracy is part of the executive branch. But supporters of the current system argue that the current system is similar to the French magisterial system. The European Court of Human Rights has resolved similar disputes by examining the extent to which the procuracy directly oversees both the investigation of cases and represents the prosecution at trial. Additional

[4] The United Nations (UN) has developed guidelines for judicial independence and the ABA/CEELI is in the process of testing a judicial independence survey in the FSU, partly based on the UN principles.

issues relating to judicial independence concern the degree to which judges are responsible for judicial discipline, court administration and training.

b. Judicial Discipline and Ethics

The Parliament passed a Judicial Disciplinary Law in February 2000. A widespread consensus existed among parliament, the COJ and judges on the need for such a law in the battle against corruption. Most judges, however, have criticized the law arguing it gives too much authority to the COJ and the basis for initiating a disciplinary procedure are vague. Judges argue the judiciary should have greater responsibility in judicial discipline in order to retain its independence. Moreover, the judges believed they were not adequately consulted when the COJ and parliament drafted the law.

When the Conference of Judges convenes in June 2000 for its first meeting, the Conference will likely adopt a Judicial Ethics Code. The COJ has prepared a draft Code. USAID and ABA/CEELI will initiate systematic and widespread training on judicial discipline and ethics and assist with organizing the May 2000 meeting of the Conference (see discussion in II(G)(2)).

While the judicial reform activities has brought a core of reform-minded judges to the bench, there needs to be greater transparency and the public needs an increased understanding of what is really happening in the courtrooms. Such factual information will inform anti-corruption efforts and prove far more useful than the anecdotal information that now circulates. An informed and involved civil society will help guarantee proper judicial process.

In order to help deter and remedy corruption, a court monitoring activity could be implemented on the ground by qualified NGOs and/or business associations (for commercial law cases). Violations of possible judicial ethics and procedure could be reported to judicial disciplinary authorities. The activity could be restricted to the courtroom, or could extend beyond the courtroom to monitor enforcement of civil and administrative judgements. While shining a light on possibly improper judicial activities, it would assist the judges by reporting accurately on court decisions. Many erroneous stories appear in the press – often intentionally. Judges, correctly so, do not discuss their cases with the media and are not able to respond.

Another activity would be to conduct a Bar poll that periodically queries lawyers, advocates, notaries, procurators and other legal professionals on the progress of judicial reform and the performance of judges. As a follow-up to the poll, a conference could be held to devise solutions to the problems identified.

c. Judicial Training

Judicial training represents a priority need, but proves very problematic to address. Training is needed in practically all substantive areas of law and judicial skills, especially how to apply the law in specific cases and legal drafting. These problems exist nationally, but are especially severe outside of Tbilisi and Kutaisi. Long-term sustainability of judicial training

requires two key conditions: a corps of competent Georgian trainers and guaranteed state funding.

The EU/TACIS program has prepared a comprehensive inception report addressing the retraining of Georgian judges. The EU's primary counterpart in this activity is the Judicial Training Center and the key task areas are: 1) institutional strengthening, 2) human resources development, and 3) public awareness building. Working groups have been formed in the following areas: 1) criminal law and procedure, 2) administrative law and procedure, 3) civil law, 4) human rights/women's rights, 5) market economy/non-legal training/international law, and 6) civil procedure and judicial management. This activity intends to develop 120 curricula in the form of modules.

USAID has identified a few substantive areas of law for judicial training. Training on the new provisions of the Law on Judicial Disciplinary, as noted above, will be necessary. Training on the Administrative Code, a centerpiece of the efforts to ensure transparency and fight corruption, must be a priority. The Commercial Law section of this assessment identifies specialized topics for judicial training, as well as training of other legal professionals. Depending on the curriculum that the JTC develops, USAID could consider fulfilling the need for training on select constitutional, criminal, local government and civil law provisions.

One of the elements of an independent judiciary is the involvement of judges in directing their own continuing legal education. To help meet this challenge, in February 1999 USAID sent ten newly qualified judges to the US on a study tour and to receive training in adult learning techniques at the National Judicial Training Center in Nevada**.** In order to ensure that the professional needs of the judiciary are met, judges must have substantial input in JTC policy decisions. The rationale for this principle is that judges are best qualified to assess their own needs. Judicial participation on the JTC board could be provided through the Judges of Georgia association, the Conference of Judges, the Supreme Court, or all of the above. Regardless of the process, the importance of majority judicial participation cannot be overstated.

Donor coordination is always important, but is especially important in judicial training in Georgia at this time. The primary donors are the EU, WB and Soros. Even if USAID assumes responsibility for certain areas of training, it must resolve questions of implementation, specifically whether USAID-supported training will be provided through the JTC or through other mechanisms. USAID will need to analyze the capacity of the JTC to provide quality training in a timely manner to a sufficient number of judges. USAID will also need to reconcile the urgent need for judicial training with the need for training of other court-related personnel, such as legal assistants, marshalls (aka court executors or bailiffs) and notaries, and determine whether support for such non-judicial training constitutes a priority. This can only be answered after gaining a full understanding of the scope of the EU, WB and Soros training assistance.

d. Information

Every judge interviewed spoke of the critical need for copies of laws, commentaries on the laws, and copies of court decisions. Parliament has enacted approximately 785 new laws

since 1995 with numerous amendments; thus, the information gap is understandable. Moreover, the reform laws introduce democratic processes and a market economy and the judges need commentaries and manuals to familiarize themselves with these new concepts. The Department of Logistical Support of General Courts, nominally under the Supreme Court, has the responsibility to furnish judges with legal materials. But judges report they receive very little from the Department and must use their own money to acquire copies of laws and other materials.

The lack of information poses a problem for all legal professionals – not just judges. The Ministry of Justice, with WB support, publishes the Official Gazette which prints copies of new laws and amendments. Legal professionals usually have a stack of Official Gazettes in their office and if they need to do research, they try to remember in which issue a law was published. Tracking amendments proves especially problematic.

The Parliament will soon have its electronic legal data base on line and available for public access. As the WB's judicial reform project progresses, the larger courthouses will receive computer equipment and have electronic access to judicial decisions. But this could take several years and internet connectivity outside major cities is poor. GYLA has a law library in Tbilisi that is open to the public, but as a practical matter only GYLA members use the library. There are no courthouse law libraries in Tbilisi or other cities and the WB courthouse rehabilitation project may not provide funds for libraries. The Parliament has an outdated law library and the law library at Tbilisi State University is reportedly woefully inadequate. The JTC library, while inadequate now, will receive EU assistance to upgrade.

Several of the ROL donors fund the preparation and publication of commentaries. But there has been little coordination as to who is funding what commentaries and how the commentaries are distributed. *Annex C, Legal Databases and Publications*, prepared by USAID for this assessment, offers a draft summary of databases and other sources of legal information in Georgia currently available.

e. Court Administration and Case Management

Courts are over-burdened and ill-equipped to handle increasing caseloads. *Annex D, Court Caseloads* provides a breakdown on the caseload at the various courts. The judges work long hours and unconfirmed reports indicate they do not always meet the Civil Procedure Code requirements for filing judgements. Unrealistic deadlines can adversely affect due process if judges do not have adequate time to decide a case and prepare their opinions.

Several reasons explain the delay. First, a backlog of old cases are now being heard, and an increasing number of new court cases are being filed. Second, a delay in appointments has left judicial seats vacant, putting an additional strain on sitting judges. Third, insufficient or non-existent computer equipment, outdated courthouse facilities, and an under-developed court administration system further aggravates the problem (little attention has been paid to developing the capacity of marshalls, clerks, and legal assistants.

The WB judicial reform project will develop and/or strengthen case management procedures. This will include guidelines and procedures to harmonize docket and document management, stardardizing documents for the court system and providing equipment.

f. Funding for the Judiciary

The problem of low salaries and non-payment of salaries for government officials impedes reform throughout the legal sector. The average judge's salary has been increased from approximately 50 Lari a month, up to 500 Lari per month (after taxes about 375 Lari, U.S. $210) for those judges who have passed the qualification exam[5]. But even 500 Lari a month may be insufficient for a living wage. Chronically late salaries, especially for judges outside Tbilisi, have further eroded many judges confidence that judicial reform will succeed. The salary problem is an invitation to corruption and many perceive this as a lack of GOG support for the reform process.

After a very contentious debate, in February 2000 the Parliament approved a budget that in theory should cover judicial salaries. However, the budget fails to provide sufficient funding for court operating expenses. The WB, as part of its judicial reform package, proposed that 70% of court revenues (e.g. taxes, fees and penalties) should go toward recurrent operating costs. Subsequently, the President issued Decree #633 of November 27, 1999, instituting the 70% solution. Some Georgian officials, however, interpret this decree broadly and see it as a mechanism to pay judicial salaries. The very real possibility for abuse exists if judges can pay their salaries from the fines they collect.

Determining the extent to which the GOG can provide adequate funding for the judiciary proves very difficult. A comparative budget analysis of the court system that shows how allocations are expended could be a useful tool for demonstrating how current budgets can be re-configured to support higher salaries. Similar surveys in other countries have proved effective in identifying ghost employees. Clarification on any other benefits that the judges receive, such as housing allowances and pensions, would also be useful.

g. Judicial Recruitment

The judicial qualification exams are the corner-stone of judicial reform and have received widespread acclaim in Georgia and abroad. The COJ, with support from USAID and ABA/CEELI, has prepared and administered six exams since May 1998. The first four exams were prepared and printed in the US, but the last two exams were prepared and printed in Georgia, a significant advance in the COJ's sustainable capacity. Another noteworthy accomplishment is that the COJ has provided technical assistance to the Governments of Moldova and Tajikistan to assist them prepare for administering judicial qualification exams.

By all accounts, the first three rounds of exams were fair and transparent. The March 1999 exam led to unconfirmed reports of improper practices because of the unusually high number of candidates that passed. A number of logical causes could explain the pass rates and this report makes no conclusion.

[5] The Law on the Courts provides that newly qualified judges shall receive a salary at least equal to that of MPs.

The September 1999 exam raised concerns owing to the very low pass rate (13 candidates out of 390 passed the exam). The first four exams were held in less than one year, but now they appear to be given on a regular bi-annual schedule. At a minimum, the COJ should review the examination process to ensure that a consistent standard of difficulty is used, as well as a reasonable examination schedule that is designed to replace losses caused by normal attrition.

One possible explanation for the recent low pass rates, is that the best candidates may have now taken and passed the exam. To become a judge a person must be at least 30 years old. Thus, bright, capable young lawyers will need to wait a few years before they can become judges. The ten-year terms for the old judges who did not take the exam will expire in 2001. They may have their terms extended if replacements are not available; especially, those judges sitting in the less desirable, remote, rural regions. In addition to a smaller talent pool, lack of funding for the judiciary is also a deterrent to recruiting new judges.

A related issue is the process of vetting and placement. Some judges and other legal professionals have questioned whether the appointment of judges is fair and transparent, or whether favoritism or other means of undue influence are affecting this process. Safeguards for the appointment process do not exist to the extent they do for the qualification process, and assistance to examine ways to help improve this critical stage of judicial selection could be considered. Closer attention should be paid to the character portion of the judicial qualification process. It is not clear how and to what extent this requirement is being fulfilled.

h. Civil Law and Common Law Systems

As part of the dialogue on judicial independence, a related question concerns how Georgians define their legal system. Georgia is a civil law country; but many Georgians point to radical changes in how the legal system operates. For instance, an adversarial approach is developing in courtrooms between opposing counsel. Judges are now more likely to write a dissenting opinion. In many civil law countries a dissenting or concurring opinion is not written or published, nor are dissenting votes noted. In Georgia, the impact of a dissenting opinion was vividly demonstrated when Gia Meparishvili, then serving on the Constitutional Court, wrote his opinion finding the requirement that sitting judges must take the judicial qualification exam did not violate the Constitution.

Georgian judges do not rely on stare decisis and would reject the characterization that they are making laws. Nevertheless, judges face the dilemma of adjudicating cases de novo and filling legislative gaps. This often leads to inadequate adjudication and inconsistencies in judicial decisions. Consistency in decisions is especially important in light of corruption and judicial conflicts of interest. While rejecting the doctrine of legal precedent, judges often find decisions by high ranking and/or well regarded judges persuasive. The problem arises, however, that only the Supreme Court and Constitutional Court publish their decisions and these decisions are not widely distributed. Moreover, judges need to develop a more expository writing style that discusses the facts of a case and the legal authority for their decision.

Perhaps a hybrid system is emerging that integrates principles and practice from both models – adapted to the Georgian environment. In any event, the legal reform process would benefit

from clarifying these issues so judges better understand their role, produce consistent decisions and harmonize judicial practice. In particular, a peculiar feature of the judicial system, that greatly delays case processing, is that when cases are appealed a new trial on the merits is held. The court does not limit itself to hearing the errors allegedly committed in the court below.

3. Judicial Organizations

Several public and private organizations have responsibilities, potentially overlapping, relating to the judiciary.

a. Council of Justice

The Council of Justice (COJ), founded in 1997 pursuant to the Law on the Courts, is the public body responsible for coordinating judicial reform. In particular, the COJ prepares and administers the judicial qualification exams, the competition for seats and the judicial candidate vetting process. The COJ then makes recommendations to the President who appoints the judges. The COJ also has a role to play in judicial discipline. The President chairs the COJ and each of the three branches of government has four representatives. The COJ has a permanent staff, which is managed by the Secretary, who the President appoints.

Many people saw the COJ as an interim body that would dissolve after the completion of judicial reform. But the Law on the Courts is silent on this issue and no other legal source for this claim can be found. With so many new judges on the Common Courts and the Supreme Court, judges and others argue that the COJ should play a reduced role in court administration and judicial discipline so as to ensure judicial independence. Others argue that the COJ is an effective and progressive body and its mandate should be expanded to include other legal reform oversight functions, such as administering qualification exams for the procuracy and bar.

Two potential concerns arise as to expanding the COJ's mandate. First, if the COJ continues to expand its role in judicial reform, the government should consider changing the composition of the COJ so that a majority of the council represents the judiciary. Second, if the COJ's mandate is expanded, which would require amending the law, to include other sectors of legal reform, such as the procuracy, it could create an unwieldy body attempting to accomplish too many objectives. Moreover, providing procuracy representation on the COJ may strengthen the argument that the procuracy is part of the judiciary. Such a scenario could threaten the objective of judicial reform, since interests would be further divided. Another option is to give the COJ responsibility for qualification of legal professionals, including judges, procurators, and for a limited period –lawyers, and place other functions associated with judiciary with the judiciary.

b. Conference of Judges

A plenary of all Georgian judges, except the Constitutional Court, will comprise the Conference of Judges, and the Chairman of the Supreme Court will serve as chair. The Law on the Courts provides for establishing the Conference and gives the Conference a broad

mandate for overseeing judicial independence. The law is vague, but the Conference's primary responsibilities are for court administration and judicial discipline. The Conference will elect an Administrative Committee, Disciplinary Council and a Coordination Council. These responsibilities need reconciling with current functions of the COJ and the Department of Logistics. The Conference has yet to be established, but the Chairman of the Supreme Court has scheduled the organizational meeting for June 17, 2000. USAID and ABA/CEELI will provide assistance for this meeting.

c. Judges of Georgia

The Judges of Georgia (JOG) is a private association established in August 1999. Its charter charges it with responsibility for judicial independence, enhancing public confidence in the judiciary, working with the mass media, improving the welfare of judges, and lobbying for the rights of the judiciary in government. All Georgian judges are eligible for membership and approximately 100 judges are founding members. Most of the members are from Tbilisi and Kutaisi, but the JOG purports to be expanding.

According to its chairman, JOG hopes to participate in the development of curriculum at the JTC. The JOG has slowly begun to speak out on the issue of judges' salaries and is the logical organization to press this issue and serve as an advocate for judicial independence. However, the JOG needs to further define its goals and develop an action plan for achieving these goals so as to ensure its activities do not overlap with the Conference of Judges. USAID and ABA/CEELI will provide the JOG with a sub-grant, which will enable the JOG to hire a director and secretary, rent an office, purchase equipment, and increase its activities.

d. Judicial Training Center

Judicial training will be delivered by the Judicial Training Center (JTC, aka Training Center for Justice), which was established in 1998 as an independent NGO. The JTC has faced numerous obstacles. Since its founding, the JTC has had five directors. The JTC's mandate quickly grew to include training for legal assistants, marshalls (aka court executors or bailiffs), notaries, and preparatory training for the judicial qualification exams. This proved to be too ambitious a mandate. The COJ had prolonged discussions for several months as to the JTC's activities. As a consequence, Presidential Decree #591 of October 12, 1999 was issued. The JTC was refounded and will now train only judges and legal assistants. The MOJ will train marshalls, notaries and MOJ personnel. The MOJ training organization, the Teaching Methodological and Scientific Analytical Center of Justice, is the legal successor to the original JTC.

The JTC plans to have its core curriculum developed and begin teaching these courses by April 2000. The JTC has provided some training, but the operational start-up of systematic training has been slow. There are still many outstanding questions related to the plan for the implementation of training through the JTC, and the JTC's capacity to meet the growing demand for training on complex, new subjects. The EU/TACIS inception report provides a more in-depth discussion of the JTC.

The JTC's State budgetary allocation is provided through and administered by the COJ. Financing for JTC constitutes a constant struggle. Some in the GOG argue that the

government should not fund a private organization, but donors want to see burden sharing. The WB, EU and Soros are the primary donors. The COJ plans for a second JTC office in western Georgia. The building will require renovation and the JTC's capacity to take on training at a second cite at this time is problematic.

e. Department of Logistical Support of General Courts

The Department of Logistical Support of the Courts (Department of Logistics), pursuant to the Law on the Courts, serves as the primary administrative and management body of the judiciary and handles those functions previously handled by the MOJ. This includes drawing judicial districts, ensuring adequate staffing in courts, collecting and maintaining judicial statistics, supplying courts with office equipment and legal information, and maintaining the courts' physical facilities.[6] The COJ currently collects court statistics, but the issue arises as to whether the Department of Logistics should handle this responsibility. Many judges have criticized the Department of Logistics for not acting in a transparent manner. After the establishment of the Conference of Judges, the Department will need to become more accountable and report to the Conference of Judges Administrative Committee.

f. Supreme Court

Lado Chanturia, the author of the judicial qualification exams and former Minister of Justice, was appointed Chairman of the Supreme Court in 1999. Since his assuming the bench, sixteen other vacancies have been filled. The Court now has a total of 43 judges; perhaps, too large a number since an appellate court system has now been established. The President proposes judges for the Court, which parliament must approve.

The Supreme Court has three main chambers: Civil, Criminal and Administrative. The Supreme Court serves as the court of first instance for appeals from the Central Election Commission and serious criminal cases. Lay judges are used in criminal cases, but this should be discontinued. Special qualification exams for the Supreme Court judges are tentatively scheduled for May 2000. The Supreme Court faces a serious financial shortfall, but the funding is not as precarious as for the lower courts. Supreme Court funding appears as a line item in the national budget.

g. Constitutional Court

In addition to the Constitution, the Law on the Constitutional Court enacted January 31, 1996, and the Law on the Procedure in the Constitutional Court, enacted March 21, 1996, govern the Court's operation. The Constitutional Court hears only constitutional issues and serves as a court of first instance for such cases. The Court has heard very few cases since its formation in September 1996. As of September 1999, 118 claims had been filed, 82 were heard, and approximately 50% of those heard were dismissed. The Court ruled in favor of individuals and organizations in approximately 40% of the cases it heard.

The Court's rules of procedure make it difficult to establish standing and permit the Court to hear only one case at a time. The public is generally unaware of their constitutional rights

[6] See WB assessment, no. 17356-GE. The WB will provide assistance to the Department of Logistics.

and unfamiliar with the Court as a legal institution. The potential exists for greater use of the Court. For example, according to a judge on the Court, a group of individuals with the same claim can join in one case, paying one filing fee of ten Lari. This may provide an opening for "class action" type constitutional claims. If citizens, lawyers, and NGOs were better aware of how the Court could be used and if Court procedures were streamlined, the Court could become an important judicial body for enforcing constitutional law.

Assistance to the Court in the short-term should be restricted to addressing impediments to access, such as revising the Law on Procedures and training NGOs and lawyers on how to use the Court for constitutional claims. Only then should other areas of assistance be explored.

C. The Procuracy and Law Enforcement

1. Progress to Date

Judicial reforms are at risk without reform of complementary legal sectors, such as other procurators, police/investigators, marshalls, notaries, lawyers, prison officials, etc. The procuracy in particular desperately needs reform. The team heard numerous reports of procuratorial abuse, poor working conditions and corruption. Procuracy reform was a condition for Georgia's admission to the Council of Europe. While the 1996 Law on the Procuracy marked a positive step forward, virtually no progress has been made since then. The 1996 law, however, did remove the procruacy from having a role in civil cases.

Contingent on a manifestation of political will for reform in the procuracy, the US Department of Justice (USDOJ) would like to initiate activities to address the critical procuracy needs. In the Fall of 1999, USDOJ conducted an assessment of the Kaheti Procurator's Office, headed by a reform-oriented procurator, and in February 2000, USDOJ and ABA/CEELI conducted a feasibility study on assisting with procuracy exams.

2. Key Constraints and Priority Needs

Historically, procurators enjoyed the highest stature in the legal profession, and old codes of honor still protect them and the police. In the Soviet system, procurators drove the implementation of State and Party policy, and oversaw government activities in all other areas of bureaucracy.

The procuracy remains a powerful organization. For example, procurators appear to be gaining more authority at the expense of the judiciary. In the 1999 amendments to the Criminal Procedure Code, previously checked authority was returned to the procuracy, the police, and other investigative bodies. The Ministry of Interior (MOI) and the Procurator General led an initiative to "clarify" sections of the Criminal Procedure Code. Human rights advocates, NGOs, legal professionals, and others have expressed grave concerns about the regressive nature of the amendments, and fear that incidents of police and Procurator abuse will increase.[7]

[7] Human Rights Watch has prepared an assessment of the Criminal Procedure Code amendments, which will be released in the near future.

Concerning the old balance of power between law enforcement and the courts, one source noted: "police and procurators who got kicked out used to be made judges." Now, with the benefit of judicial reforms, judges earn ten times more than procurators and are gaining the reputation as a more prestigious and elite group. Procurators outnumber judges three to one. One Georgian observer noted that with each reform that improves the status of judges and lawyers, the procuracy and the MOI feel the sting and tighten their resolve to resist change that might weaken their position. The swift passage of amendments to the Criminal Procedure Code evidence their dogged political clout. The procuracy and MOI's ability to damage legal reform should not be underestimated. A few reformed-minded procurators, however, believe that it is in the procuracy's interest to accede to reform in hopes of raising their stature and income.

Procurators work within an informal yet firmly established (and many say, corrupt) network of police, criminal advocates, and defendants to direct the course of adjudication before courts ever receive a case (see discussion below on bar reform). With salaries of only 30 Lari per month, it is not surprising that competent and fair procurators are tempted into other legal professions as reforms progress and those that stay are tempted to engage in rent seeking. Combined with a police force that numbers between 70 and 90,000 who earn even less and go months without pay, and a corrupt and underpaid force of marshalls responsible for enforcing court judgements (earning 18 Lari per month) -- the need for reform of the law enforcement sector is increasingly urgent.

D. Executive Branch

1. Progress to Date

Many agencies in the executive branch have failed to solicit and accept public input, implement and enforce laws, and are noted for wide spread corruption. The potential now exists, however, for radical change that will redefine the relationship between the government and the public. On January 1, 2000, the most progressive Administrative Code in the FSU went into force. The Code's groundbreaking Freedom of Information (FOI) section will help ensure government transparency and reduce opportunities for corruption.

USAID and its implementing partner AMEX organized a conference in December 1999 to plan for the implementation of the FOI section of the Administrative Code. Senior officials from the executive branch, MPs, judges, NGOs and the media participated in the conference and prepared a series of recommendations, known as the Gudauri recommendations (see *Annex E, Gudauri Recommendations)*. The GOG has moved quickly to implement many of these recommendations. In December 1999, the President issued Decree 1549, which established the Administrative Code Advisory Board, chaired by the State Minister with representatives from parliament, the judiciary, the executive branch, media, NGOs, and donors. The Board has four general areas of activities in which it will advise the government: 1) proposals for legislative amendments, 2) training for civil servants, 3) public awareness, and 4) overseeing implementation.

In addition to the Administrative Code Advisory Board, the Four-Point Program established the Civil Service/Administrative Reform working group co-chaired by the Minister of Justice

and the Chief of the DG Office at USAID. Representatives from the GOG and the donor community participate in the working group. Of particular relevance to the activities of the working group is the WB's Civil Service reform project.

2. Key Constraints and Priority Needs

Many government agencies lack the capacity, resources and political will to implement and enforce the laws. In particular, government agencies do not have in place the processes and procedures needed for compliance with the new Administrative Code. Implementing the Administrative Code will require reviewing and probably amending agency charters and promulgating regulations to create appeals mechanisms. Model regulations need to be prepared and then adapted for use by all agencies, with minor modifications needed for technical issues unique to a particular agency. For those targeted agencies that need to implement administrative regulations, a process mapping exercise could be conducted. Civil servants at the national, regional and local levels require training on drafting and promulgating regulations. A central database with all the regulations promulgated by government agencies that the public can access needs to be established.

In both theory and practice, government agencies, in particular the procuracy and the MOI, must not have final review and authority over administrative decisions they make. Administrative Code implementation will fail if the judges are not independent, qualified and capable of reviewing administrative decisions. In most FSU countries, administrative schemes function without the involvement of an independent judiciary; thus, increasing opportunities for corruption by avoiding a transparent process for government accountability.

Several government agencies have expressed interest in developing management information systems to track the paper flow within their agency and automate finance and accounting systems. Such systems will help the agencies to respond to FOI requests, but the agencies should try to use a common system. In this regards, the Parliament, with EU/TACIS support and in cooperation with a local vendor, developed a Georgian software system that has proved user friendly, transferable, and sustainable. The Chancellery, with UNDP support, has also developed a software system, informally known as "the Chilean system", which has good potential. However, the Chilean system is very complex and modifications to the system need to be made in Chile. USAID expects to have an assessment of the two systems completed in the near future.

In March 2000, the Central Election Commission (CEC), with assistance from USAID and IFES, launched a web-site containing a broad array of election-related information.[8] The web-site has candidate biographies, election laws and regulations, general election information, forms, names and addresses and most important – it will display national, district and precinct level results. The effectiveness of this web-site should be tracked to see if and how it could be replicated at government agencies.

With the establishment of the COJ, the MOJ no longer has a major role to play in judicial administration. The Minister of Justice, however, does serve on the COJ board and the

[8] See www.cec.gov.ge/index.htm for the English version.

Department for the Enforcement of Judgments reports to the MOJ[9]. The Department and the MOJ share responsibility for selecting and training marshals. However, judgements are largely unenforced (one source reports only 30% of civil and administrative judgements are enforced). The apparatus for enforcement, with its dysfunctional fee structure partly explains the problem. The filing and enforcement regimes actually create disincentives for use of courts between filing and enforcement fees, plaintiffs have to post up to sixteen % of their claims. The WB may provide assistance to the Secretariat.

E. Parliament

1. Progress to Date

With its reform-oriented leadership, the Georgian Parliament is one of the most active in the FSU. As noted above, parliament has passed approximately 745 pieces of legislation since 1995. In addition to a new Constitution, some of the most important laws include a Civil Code, Civil Procedure Code, Criminal Code, Criminal Procedure Code, Administrative Code, Administrative Procedures Code, Law on the Courts of General Jurisdictions, Law on the Procuracy, Law on Procedure for Enforcement of Judgments, Licensing Law, and a plethora of amendments. Numerous commercial laws have also been passed in order to help Georgia receive an invitation to join the WTO (see Commercial Law section of assessment). The Parliament has been effective in putting the legal framework in place for democratic, market-oriented economy.

The Citizens Union of Georgia (CUG), President Shevardnadze's party, has a majority of seats in parliament and increased its number in the October 1999 elections. Many of the previous parliamentary leaders returned to parliament, but the majority of the CUG members are new and initially appear more conservative than their predecessors. Members of Parliament (MPs) serve five year terms. Parliament is now unicameral, but a Senate is supposed to be added after the country's restoration of its territorial integrity.

In1992 the Parliament had two computers. Several donors have provided assistance to upgrade the system. In particular, USAID contributed over $900,000 for the installation of a management information system. This local area network (LAN) connects 17 Offices, Committees and Departments. Furthermore, the public will be able to access the electronic legal database.

2. Key Constraints and Priority Needs

A great need exists for increased parliamentary oversight. For the past five years parliament was so occupied enacting new laws, it did not have sufficient time to conduct oversight of the executive branch. If the laws are not implemented and enforced, parliament needs to know what the impediments are and take action to remedy the situation. Further complicating this issue, ministers have refused to appear before parliament in some instances. MPs need to know of their rights and responsibilities.

[9] See Law on Procedure for Enforcement of Judgments, April 16, 1999.

Parliament generally operates with transparency and openness. But in several glaring instances it acted behind closed doors and without public input; specifically, when amending the Election Law and the Criminal Procedure Code. The committees need to increase their operational effectiveness and further open the legislative process to public view and to invite public participation. USAID and the National Democratic Institute (NDI) will provide assistance to parliament over the next several years to increase public input and to enhance its oversight of the executive branch. NDI will need to coordinate with USAID ROL partners on issues requiring substantive legal expertise.

While most observers agree on the reform orientation of the new laws, problems do exist with some laws, and some additional laws are still needed. In particular, judges and lawyers often complain that some laws are too vague, too broad, or too complex. In the commercial law arena, overly detailed laws are also prevalent. The concern about unpredictable treatment by court magnifies the need for precision in the laws. Inconsistent use of terminology, in laws and throughout the legal profession, worsens the situation. More implementation oriented laws with such features as reporting requirements, realistic deadlines and explicit jurisdictional authority would help.

The Constitution and the area of administrative law provide salient examples of the gaps, inconsistencies and overlaps in the laws. The new Administrative Code has a comprehensive framework for administrative law, yet there is little analysis that explains how this new law will be reconciled with old sources of administrative law, such as the Administrative Offenses Code, the Law on the Procedures for Reviewing Applications Complaints and Appeals in State Agencies, and some existing agency regulations. Nor is there an analysis that shows how it is consistent with, supersedes, or contradicts other new laws (such as the new Law on Normative Acts). At least one legal scholar has suggested that portions of the old administrative law more appropriately belong in laws directed at more substantive areas.

The Constitution has been in effect for five years. Some constitutional clauses are in conflict with subsequently passed legislation, and some clauses are vague. At some point, Georgia may undertake the task of amending the Constitution and could start preparing for that process now. Where feasible, Georgia should first consider correcting the deficiency with an amended or new law, before amending the Constitution.

Two constitutional issues have received particular attention. Georgia has a presidential system, but parliament often considers adopting a parliamentary system with a Prime Minister. In December 1999, with an amendment to the Law on the Structure and Activity of the Executive, this debate was temporarily suspended by increasing the authority of the State Minister. The issue will likely arise again after the April 2000 presidential election. The second issue concerns the Constitution's failure to define a territorial arrangement for the country, pending restoration of the country's territorial integrity.

Parliament will require continued assistance in both legal drafting techniques and on substantive legal issues. In addition, while the LAN system has proved of enormous value, its covers only half the Parliament and needs extending.

F. The Bar

1. Progress to Date

No formal professional standards exist for lawyers. But a draft Law on the Bar, required for COE accession and stalled for several years, now appears to be gaining acceptance. Consensus has been reached on the need to include a licensing provision and bar exam, despite some arguments that market forces would eventually weed out bad lawyers. The law will likely include a code of professional conduct and a delineation of attorney rights. The most contentious issue concerns the body to prepare and administer bar exams. The compromise position will probably provide that the COJ will administer the exams for a limited time period until a sufficient number of attorneys have passed the exams and formed a bar association to administer the exams.

2. Key Constraints and Priority Needs

The team heard numerous complaints that many attorneys appear in court unprepared, and attorneys acknowledge their lack of familiarity with laws and procedures. Most lawyers receive an inadequate professional education, and must supplement their education on their own to reach a minimal standard of competence (see section II(H) for a discussion of legal education).

The most critical needs in the Bar are enactment of a Law on the Bar, training in substantive areas of law and advocacy skills, access to legal information, and professional development. A program to train and strengthen the capabilities of criminal defense attorneys is particularly necessary.

a. Georgia Young Lawyers Association

The Georgia Young Lawyers Association (GYLA), which began as an alternative lawyers' association in, has received significant donor support. It has 700 members nationally, 60% of whom are law students. GYLA's original mandate was not to be a bar association in the conventional sense, but to provide support to the professional development of law students and young lawyers. To this end, it rotates bright young professionals in and out of key program and project positions. This strategy has resulted in a very young membership, average age is 24, and has alienated some lawyers who are now second and third generation members. GYLA is considering a restructuring plan that would address this problem by creating an umbrella organization of more senior Georgian lawyers, under which GYLA (as it currently functions) would form a branch.

GYLA has done good work in establishing chapters around the country that involve law students and young lawyers in educational activities and legal consultations. Members teach seminars in law schools and conduct continuing legal education (CLE). Seminars typically are open to all lawyers free of charge, but most participants are members. All GYLA chapters have telephone hotlines and some conduct face-to-face legal consultations. Some GYLA chapters provide actual representation in court. In this case, GYLA serves as a legal aid clinic and often uses law students to provide free services to the indigent.

GYLA chapters appear to specialize in legal issues relevant to each region. For instance, the Gori GYLA teaches and works on issues related to IDPs and the socially disadvantaged, as

well as domestic cases (divorce, abuse, etc.). The GYLA Rustavi focuses on human rights cases and some commercial law cases, and the Tbilisi and Kutaisi chapters cover a broad spectrum of legal issues. The Tbilisi chapter is also active in publication and dissemination of information, public education TV programs, and legislative lobbying.

b. Collegium of Advocates

The old state-run Collegium of Advocates, which was mandatory for all defense attorneys during the Soviet era, still provides most of the court-appointed lawyers in criminal cases. Current law provides for state-funded counsel for indigent defendants. The Collegium has 300-400 members who serve in this capacity. For each court appointment, a small fee is earned from the Collegium's budget that the advocate pockets, in addition to his/her salary.

The Criminal Procedure Code allows the appointment of private attorneys outside of the Collegium, but the Collegium manages to block outsiders from receiving such appointments. The "chairmen" within the Collegium select the lawyer, and close connections (characterized by some as corrupt) between the police, procurator, chairmen, advocates, and sometimes even the defendant (if he has financial means) keep this process insulated. Within this circle, self-interested state agents make decisions every day that direct the outcome of cases, often with no consideration of the legal positions of either the defendant or the victim (see *Annex F, Relationships of Legal Professionals in Georgia*).

F. NGOs, the Public and Human Rights

1. Progress to Date

This assessment does not discuss the full breadth of the human rights problem; rather, it highlights a few key legal approaches to combating human rights violations. The U.S. State Department's Human Rights Report and a letter from Human Rights Watch sent to President Clinton (see *Annex G, Human Rights Watch Letter)* summarize the gravity and scope of the problem.

A small, but dedicated group, of indigenous NGOs and international organizations have documented human rights abuses. Common human rights violations in Georgia include abuse by law enforcement officials – on the street, in pre-trial detention, in prison facilities – and discrimination against socially disadvantaged groups such as the internally displaced people (many property and housing claims are at issue in this context) and members of non-traditional religions such as Jehovah's Witnesses. These organizations have worked diligently on behalf of victims, and have had some success. They carry out public education campaigns, lobby legislators, and operate legal clinics.

The City of Tbilisi, the police and GYLA initiated an innovative pilot project, known as City Attorneys. The project provided legal representation for criminal defendants during the first 48 hours after arrest. Police abuse is most likely to occur during this critical period. During the pilot phase, 45 people were released, but the police have blocked the renewal of the project since the parliamentary election.

The Ombudsman[10] is charged with receiving human rights complaints from the public and making recommendations to parliament and the executive branch. To date, the Office has proved generally ineffective in generating the political will or capacity to attack human rights issues. The Office is now vacant and human rights advocates hope a credible candidate will be proposed. The President proposes and the Parliament appoints the Ombudsman for a five-year term. The UNDP has provided assistance to the Ombudsman's Office.

2. Key Constraints and Priority Needs

The term "human rights" is often broadly defined in Georgia. For purposes of this assessment, basic human rights are defined generally as those rights necessary for life, liberty, dignity, and the ability to work productively. It includes, for example, equal protection, due process, security of person and property, and basic freedoms (e.g. religion, speech, association). It does not include broader second tier economic or social rights, such as education, insurance, or employment benefits.

Access to mechanisms for justice to remedy human rights violations proves problematic. The barriers include disinterested incompetent courts and procurators; legal roadblocks such as the new criminal procedure amendments that give excessive authority to procurators to hear complaints of abuse; inexperienced lawyers who do not know how to effectively file or argue human rights claims; and ineffective criminal defense attorneys who fail to protect their clients from procuratorial or police abuse.

The lack of access to prisons and pre-trial detention facilities also constitutes an important issue for NGOs working with detainees. The law remains unclear as to whether the Ministry of the Interior (MOI) must allow such access, or whether the new MOJ structure provided for in the Law on Imprisonment will do so.

As noted above, the Parliament has not helped matters with the amendments to the Criminal Procedure Code. Another recently passed law is also regressive. The Law on Imprisonment, which is hailed by some for addressing human rights violations, shifts authority for detention of inmates from the MOI to the MOJ, in order to avoid the conflict of having the investigative body oversee care of inmates. But the reported problem with this new structure is that the new MOJ detention facilities will be staffed with old MOI employees serving in the same capacity.

Former Political Prisoners for Human Rights, Article 42 and other watch dog groups conduct court monitoring activities for select cases. Expanded court monitoring activities could track the behavior and legality of all players in the courtroom and provide an informal mechanism for procuratorial oversight and help deter corruption.

An effective legal services system for competent and comprehensive criminal defense representation by lawyers, would help provide a check on the actions of procurators.

[10] The term Ombudsman is often used interchangeably with the term "public defender" by translators and English-language speakers, but an Ombudsman does not have the same duties and responsibilities as a public defender has in the US.

Criminal defense attorneys need training on substantive legal issues and the mechanisms needed for fighting human rights abuses.

Legal advocacy NGOs require assistance not only to continue the legal clinics they now operate but to bring test cases, such as mentioned in section II(B)(3)(g) dealing with the Constitutional Court.

The public remains largely unaware of the magnitude of the human rights problem and other legal issues that bear on their daily life. Public support and demand for change are key in any effort to establish ROL. Currently the majority of the population has little or no access to accurate information about the law. Targeted groups and the public needs to have a better understanding of the new reform laws and how they can use and benefit from these laws.

H. Law Schools and Legal Education

1. Progress to Date

The dismal state of formal legal education partly explains poor legal performance. A corps of Soviet-era administrators and professors run many of the state law schools. Additionally, more than 200 private law schools have sprouted since independence, some of which consist of only two or three professors. The law schools, which are not subject to accreditation standards, graduate a countless number of lawyers annually. Corrupt practices determine which applicants get into the best schools, receive the best grades, and graduate. Teaching materials are scarce and out-dated. Competent practicing attorneys report that the rapidly changing legal environment makes it difficult for professors, even the best ones, to teach law. The problems with formal legal education are so deeply institutionalized that donors are reluctant to work in this area. Soros, however, may initiate a program with Tbilisi State University (TSU).

2. Key Constraints and Priority Needs

An ABA/CEELI team visited Georgia in May/June 1999 and in their report made three preliminary recommendations for reform of legal education, in priority sequence, 1) adopt a general qualification examination for attorneys, 2) develop an accreditation system for law schools, and 3) develop a general aptitude examination for law school entrance.

Given the current political environment, the first step proves the most viable in the short to medium term (5 to 10 years). A bar exam will address the problem from the demand side through market forces. Law students, knowing they will face a bar exam, will demand a higher quality of legal education. The second recommendation would help eliminate many of the fly-by-night law schools. Work in this area will prove politically sensitive, since the large state schools could use accreditation standards to eliminate competition.

CLE courses offered through GYLA and the donors presents a possible short-term training option. Legal service clinics staffed by law students also show promise, as they enable the students to develop their advocacy skills. This proves especially important since the law school teaching methodology is highly theoretical. Legal advocacy NGOs, such as Article 42 and the Center for the Protection of Constitutional Rights (ABA/CEELI sub-grantees),

operate such clinics. The difficulty in reaching agreement with law school administrators that would allow students to receive practicum credit for their clinic work is a barrier for further development of legal clinics.

III. COMMERCIAL LAW

A. Introduction and Overview

The commercial law analysis has a different structure from the ROL discussion, since this section has a narrower focus. This section seeks to provide analysis on those aspects of the Mission's economic activities that affect, or are affected by, legal reform. To this end, the discussion focuses on the implementation of the commercial law framework, and the constraints that the current commercial law structure imposes on economic growth. This section accordingly addresses: (a) the preparation and passage of key commercial laws, (b) the implementation and use of these laws, and (c) the enforcement of these laws. The principal commercial law categories covered include: company law, contract law (also referred to as obligations law), collateral law (personal property), bankruptcy law, trade regime (WTO accession), foreign investment environment, and competition policy.

The assessment does not analyze the activities of the economic reform contractors working in the areas of capital markets, accounting reform, tax and fiscal reform, banking, privatization (including land titling), and energy. The assessment, however, does discuss the legal issues raised, particularly (1) where there are linkages between the reform areas and commercial laws and (2) in identifying issues that are likely to present impediments to economic growth and that are accordingly relevant both to investment and the Mission's achievement of its Small and Medium Enterprise (SME) objectives.

B. Progress to Date

Major progress can been seen in the enactment of codes and statutes necessary to establish most of Georgia's commercial law framework, as well as various statutes supporting USAID's market reform programs. The Civil Code includes articles governing obligations law, collateral law and mortgage law.[11] Georgia also has a bankruptcy law (the Law on Proceedings in Bankruptcy), company law (Law on Entrepreneurs), anti-monopoly law[12], securities law, and tax code. The WTO issued Georgia an invitation for accession in October 1999.

Georgia has also enacted various laws governing the operations of the entities, which adjudicate and administer its laws. Primary among these are the new Civil Procedure Code, General Administrative Code of Georgia and Code of Administrative Court Procedures of Georgia. The Administrative Code is particularly important as it is intended to provide greater transparency and due process in, among others, executive branch administrative bodies. The Administrative Code includes provisions regarding: limits on the exercise of

[11] The five parts of the Civil Code in their respective order are: General Provisions; Right of Ownership and Other Rights in Rem (which includes provisions on movable and immovable property, including collateral law) and Law of Obligation – General Part and Special Part.

[12] Parliament enacted the Law on Monopolistic Activities and Competition on June 26, 1996. This law charges the Antimonopoly Service, located in the Ministry of Economy, with enforcement.

discretionary power; the right of the public to have access to administrative documents (e.g., freedom of information provisions); basic process requirements for issuing regulations (also referred to as administrative acts); and basic process requirements for administrative decisions and appeals of those decisions. The Law on the Procedures for the Enforcement of Judgments establishes a Department of Enforcement under the MOJ to enforce judgments of both the courts and administrative officials.

C. Key Constraints

The constraints to the implementation of commercial law and economic growth in Georgia fundamentally demonstrate the linkages between ROL and economic growth. Such constraints also indicate the impact that corruption has in reducing economic growth. As discussed in the following section, Georgia has made great progress in the enactment of a commercial law framework. However, the reduction of corruption and the establishment of the rule of law are critical for implementing this framework and realizing economic growth.

Many of the constraints to economic growth in Georgia – particularly with respect to SME growth – have been identified in assessments and analyses previously prepared for USAID/Caucasus. However, a number of themes arose in meetings during this assessment which bear summarizing, particularly as these themes relate to commercial law implementation and enforcement.

1. Civil Servant Corruption

Civil servant corruption, particularly within the tax inspectorate and customs, was consistently identified as the major problem facing Georgia. This corruption prevents a uniform administration of the laws, provides incentives for the private sector to engage in corrupt practices to obtain favorable results, puts entities, which do not participate, in corrupt practices at a competitive disadvantage, and prevents transparency and predictability in the public sector. Corrupt practices also threaten Georgia's economic growth. Monies which would otherwise fund government budgets are siphoned into the pockets of public servants. In addition, certain private sector participants fail to make tax and similar payments.

Public service reform, including adequate compensation for public servants, strong honest leadership, and a mechanism to enforce laws against those taking bribes are all necessary. As an indication of low salaries, the marshalls under the new enforcement service receive an average salary of approximately 18 Lari/month. Such salary may be supplemented by up to 1% of proceeds realized under a recent approach developed by the Department of Enforcement; however, such a low base salary may nonetheless create incentives for marshalls to demand payments to facilitate services they are required to perform by statute, or for skimming cash proceeds realized. Various Georgian banks state that they routinely must pay to marshalls an additional 2-3% of the value of collateral to be seized in order for marshalls to foreclose upon the collateral.

The tax inspectorate and customs were always identified as the most problematical subsectors in the area of corruption. Almost every interview conducted on the subject of commercial law and business growth began, "The biggest problems are the tax inspectorate and customs."

The absence of strong leadership supporting reforms is a related constraint. There is at least a perception that the Ministry of Defense has prevented the successful enforcement of certain matters that may be adverse to its interests. Similarly, the Antimonopoly Service has not proceeded adversely against enterprises connected with senior Georgian officials. State executive branch agencies mentioned as being particularly corrupt (without further information regarding the nature, level or source of the corrupt practices and influences) include the Ministry of Fuel and Energy and Ministry of Transport.

Despite the recent reforms regarding the judiciary – including the mandatory qualification examinations for judges – businesses remain concerned regarding the potential for judges to engage in corrupt practices. Partners of one prominent Georgian law firm report that judicial corruption is more prevalent outside of Tbilisi.

2. Over-regulation and Overly Detailed Laws

Georgian policy makers and law makers have a tendency to regulate commercial activity – rather than set rules that will allow business to function within agreed rules of the game. For example, the Law on Entrepreneurs contains detailed provisions requiring that all business correspondence be kept for ten years. Accountants note that Georgia policy makers have not yet shifted to an understanding that accountants should not support the government budget process. To quote one Georgian (who spoke in English): "Everything is too detailed. Everything."

Over-regulation and overly detailed laws make it difficult for businesses to operate, cause businesses to spend additional time and funds determining how to comply with laws, and may create disincentives for entering into business transactions. In addition, over-regulation and overly detailed laws – particularly when combined with the increased likelihood of conflicting legal standards and vague drafting – create opportunities for corruption. Anecdotes from the business community indicate that tax inspectors are exploiting provisions in the Law on Entrepreneurs and other laws that they reportedly do not have the authority to administer or enforce. Although the new Law on Licensing Activities and Law on Entrepreneurs are important additions to the statutory framework of Georgia, (1) the business registration process still contains numerous processes and requires approvals from various authorities, (2) businesses remain concerned about the numbers of licenses and other permits they may be required to obtain in connection with the ongoing operation of their businesses, and (3) the Law on Entrepreneurs contains overly burdensome provisions with which businesses must comply.

3. Vague Laws and Absence of Implementing Provisions

General complaints were raised about laws being vague, often as a result of inconsistent terminology. This may be due to a lack of legal drafting expertise. In other cases – including with respect to the Civil Code and the Law on Entrepreneurs – this likely results from difficulties and errors encountered in translating laws from German and other foreign languages into Georgian. The aforementioned laws are based on German models. Individuals also generally noted that laws often lack implementing provisions – sometimes referring to MPs failing to anticipate the processes and other tools that executive branch bodies will require to implement and administer the laws; other times expressing the views

that regulations from ministries or other implementing measures are needed to provide procedural guidance.

4. Fragmented Legislative and Executive Rule-making Process and Absence of Policy

Particularly with respect to the tax code, there is a fragmented legislative process. Over 17 sets of amendments were issued with respect to the tax code. In some instances, tax code amendments have been viewed as introduced solely to facilitate corrupt practices and transactions. Such a fragmented process suggests an absence of policy consensus, or a failure to honor that policy when personal interests dominate over public responsibilities.

5. Insufficient Judicial Knowledge of Business Practices and Concepts

Judges note that they lack an understanding of basic business practices. This includes an understanding of such matters as finance and valuation principles, as well as a contextual understanding of fields that are entirely new to them, such as bankruptcy. Judges will not be able to apply proper legal standards to factual circumstances if they lack a framework for understanding the underlying business transaction – including forms of transactions, distinguishing characteristics among those forms, simple accounting concepts, and simple asset valuation standards. These matters will be particularly relevant in judicial determination of damages and bankruptcy cases. Indeed, one judge candidly – and emphatically – stated that he needed to understand basic business concepts and new fields in order to make correct decisions, including to identify weaknesses and inaccuracies in the positions taken by advocates.

6. Insufficient Knowledge of Applicable Legal Standards and Timely Access to Laws

Legal professionals and business persons lack knowledge both of relevant laws and of easy access to those laws. The means by which laws and other legal norms are disseminated is discussed in more detail in the ROL section of this assessment. In order to emphasize the extent to which the public is not aware of enacted laws, a partner in one of the top law firms in Tbilisi was not aware until the team met with him that the Parliament has passed the Administrative Code or the Law on Enforcement of Judgments. The inability of the assessment team to pin down the status of several commercial law related matters further attests to the difficulty of obtaining information in Georgia – conflicting accounts of the status of several matters and processes inquired about were the norm, even from sophisticated assistance providers. To quote one judge, "We need information, again information". This speaker stated this in the context of needing both training, as well as in requesting materials that would help courts understand how other courts were making decisions – both correctly and incorrectly.

D. Overview of Laws and Legal Issues

1. Obligations Law/Civil Code

As previously noted, the Civil Code contains Georgia's basic contract law. The Civil Code was prepared with substantial US, Dutch, and German assistance, and with GTZ apparently providing significant assistance regarding obligations law. Several Georgian professionals

complained that the Civil Code generally needs amendments or clarifications. However, no citations were made to obligations law. Due to the poor quality of the currently available English translation of the Civil Code, it is not possible for the assessment team to determine if there are major problem areas in the obligations law.[13]

2. Collateral Law

The absence of a registry covering collateral constitutes the most glaring omission in the commercial law framework. Specifically, the "unified public registry" contemplated by Article 311 of the Civil Code has not been established. Article 311 provides for the establishment of a register for recording the rights of ownership in immovables and rights in other property. The Article specifies "The procedure for arranging the register shall be defined under a separate law." Pursuant to Article 255, pledges of personal property which are notarized are generally required to be recorded in the public registry. [14]

Lawyers, international assistance providers focusing on land issues, and bankers all agree that establishing the registry would greatly assist Georgia. Tbilisi-based lawyers spoke of contortions in making personal property filings in real property records (both State Land Management Bureau and the Technical Inventory Bureau). In order to complete the statutory scheme, reduce confusion, and establish an institutional body as responsible for maintaining a unified registry, the personal property registry need to be established.

The collateral law may also suffer from deficiencies that will cause confusion and that will limit the attractiveness of lenders using personal property as collateral. Several legal experts, including one prominent Tbilisi lawyer, stated that the collateral law is deficient in not establishing a clear priority scheme among holders of pledges with competing claims on property. The law's disposition provisions also contain various deficiencies which may retard the efficient and transparent disposition of property.

Related to the adequacy of the collateral law is whether the Civil Code adequately governs the intersection of collateral law and mortgage law. Without citing specific provisions, several persons suggested that the Civil Code might be inadequate in this respect. In addition, concerns were expressed regarding whether the mortgage law (and also the property law) also sufficiently addresses immovable property rights (e.g., houses and apartments) with respect to which the owner does not own the underlying land.

3. Bankruptcy Law

The popular view is that bankruptcy law is not understood in Georgia. There have been few bankruptcy cases brought for reasons about which this assessment can speculate based on

[13] USAID's ROL implementing partner, AMEX, expects to have a high quality English translation of the Civil Code available by May 2000.

[14] Pledges of personal property are recorded in a number of places, both based on the introductory language to Article 255 ("A pledge of movable things and endorseable securities, where necessary, as well as other non-material property wealth is effectuated under the procedure for the acquisition thereof"). Liens on motor vehicles are recorded with offices of the local police department. Pledges of shares of limited liability companies are apparently registered in company registration records at the court where the LLC's charter documents are registered. Tax code liens are filed on a regional basis in "county offices".

discussions held. Businessmen and the public may not understand the purposes of bankruptcy and the new law, including the rights and obligations associated with bankruptcy. Directors and managers may fear liability for voluntarily filing cases. The filing of bankruptcy by companies which are state owned is likely to lower the value of the company that the GOG may otherwise feel will be obtained for that company upon its privatization. In August 1999, President Shevarnadze criticized the Ministry of State Property Management for not raising sufficient revenues from privatization. Businesspersons and lawyers may not trust the courts and bankruptcy administrators to handle a bankruptcy case honestly and competently – both as a result of the historic corruption among the judiciary and the newness of the process. Workers may fear losing the right to be paid wages and of losing jobs.

The bankruptcy law itself is generally acknowledged to require various amendments, and some suggest regulations, to clarify unclear provisions and complete various missing concepts. For example, the definition of insolvency – based on the inability of a debtor to perform obligations in a fixed term – is considered vague.[15] There is no provision establishing a body to supervise bankruptcy administrators, who evaluate the debtor's property and, when directors of legal entities are terminated, reportedly have the authority to enter into agreements on behalf of the debtor. Tax liens are junior in right of payment to unsecured claims. In addition, provisions of the Civil Procedure Code, which generally applies to court proceedings of all courts of general jurisdiction, including bankruptcy cases, may require some amendments so as to not overrule certain specific procedural provisions of the bankruptcy law.

4. Foreign Investment Environment

Foreign investors in Georgia are uniformly frustrated by the pervasive corruption, complex and unclear tax code, and over-regulation of their businesses; specifically, the Law on Entrepreneurs and assorted licenses requirements. Various types of taxes, and their rate structure, result in a high net tax rate for businesses. Tax inspectors pay numerous visits looking for excuses to extract a bribe in exchange for overlooking alleged violations, including minor violations investors attribute to over-regulation. Investors complain about the ability of the tax inspectorate to freeze their bank accounts (into which certain specified amounts required to form and operate a business entity must be deposited; other accounts are presently protected by bank secrecy laws) and cause the funds to be transferred to the state budget without any requirement of a court hearing. Customs smuggling and customs officials seeking bribes are additional causes of significant complaints.

5. Competition Policy

The team did not conduct heavily focused discussions regarding the adequacy of Georgia's anti-monopoly law governing non-regulated industries. Some sources surmised that Georgia probably has an adequate anti-monopoly law. One of the primary constraints presently associated with the implementation of the law is that the individuals leading the present anti-monopoly commission, who are appointed by the President, lack the will to administer the

[15] This may be particularly troublesome if, as one person suggested, it is a criminal violation under the new Criminal Code for a party not to file a petition with the court when insolvent.

policy contrary to the interests of high level Georgian officials and those associated with them.

E. Priority Needs

Georgia's commercial law statutory framework has largely been drafted. Georgia now needs to implement that framework. Those charged with administration, adjudication and enforcement of the laws must perform their roles in a consistent and predictable fashion that complies with the statutory framework. The business community must understand the statutory framework and the obligations and benefits it imposes. In several instances – largely involving collateral and bankruptcy law – additional technical assistance will be required to complete the statutory framework, amend vague provisions and conflicts in the existing laws, and provide additional provisions that will facilitate the application and enforcement of the law.

Improving the investment climate and encouraging SMEs also require that over-regulation of businesses continues to be reduced. As discussed above, executive decrees, regulations and cases must be distributed promptly and be available to members of the legal community, administering agencies and the public. Recommendations regarding the publication and distribution of such information, as well as recommendations for better public participation in parliamentary processes, are set forth in the Recommendations section.

The items listed in the Commercial Law Recommendations section are critical to the impartial and predictable administration, adjudication and enforcement of Georgia's commercial law and to economic growth. However, it must be emphasized that *the most important need for the impartial administration is the reduction of public servant corruption* – in the tax administration, customs administration and public administration as a whole. Concomitantly, the reform of Georgia's tax code – to develop a consistent code with a structure that will balance the needs of businesses to enjoy their profits against the need for the state to raise revenues – is essential to Georgia's stability and economic growth.

IV. RECOMMENDATIONS

It is important to keep in mind, when reviewing the below listed recommendations and designing corresponding implementing activities, that the environment in Georgia is dynamic.[16] Implementing mechanisms must have the flexibility to adapt to changing legal, political, social, and economic variables. Critical assumptions stated in Georgia's new strategic plan should be considered as well. Furthermore, the assessment recognizes that the recommendations are beyond the manageable interest of one implementing organization or even one donor.

The following recommendations are divided into two sections that correspond to the two sections of the assessment: Rule of Law and Commercial Law. Where direct linkages exist between the recommendations, they are indicated in italicized parentheses. The team has also

[16] When reviewing the recommendations, the reader should refer to the Annex H matrix table, which provides a survey of the impact of SO 2.2 as of February 2000.

included some recommendations in the Rule of Law section designed to address problems of corruption. These primarily involve aspects of administrative law.

A. Rule of Law Recommendations

1. Project Design

a. Executive Branch Counterparts

Develop criteria for selecting executive branch agencies with which to work. Possible criteria could include: (1) has USAID worked productively with the agency, (2) does the agency have the political will to undertake reform, (3) does the agency have the requisite minimal capabilities, [i.e. an implementation and enforcement agenda should not get ahead of the capacity of the implementing agency and its allied organizations] (4) who are the agencies primary users/clients and are these users/clients with whom USAID interacts and supports, (5) how does the agency manage its interactions with its users/clients, (6) how does the agency manage its relationship with opponents of legal reform.

b. Activity Locations

Develop criteria for selecting cities and regions in which to conduct activities. Possible criteria could include: (1) a District Court with Demonstration and Administrative Functions (DCDA, courts with the biggest caseload and number of assigned judges), (2) courts noted for the high caliber of sitting judges, (3) GYLA has chapters or partner relationships, and (4) regions in which USAID has other activities.

2. Completion and Refinements of Legal Framework

a. Laws

Continue to support legislative reform as needed with technical assistance, conferences and workshops. Ongoing support to enactment priority legislation such as the Law on the Bar and possible amendments the Judicial Disciplinary Law, Law on Constitutional Court Procedures, Law on the Courts, Administrative Code, Criminal Code, Criminal Procedure Code, Law on Forensic Evidence, Law on the Procuracy, etc. This will entail an analysis of the current legislative framework in a particular area of law to identify strengths, weaknesses, gaps, and redundancies (*CL Recommendations 1(a) –(f)*)

b. Administrative Code

Conduct a comprehensive assessment on the status of administrative law. This assessment should analyze the extent to which Georgia's new Administrative Code and Administrative Procedures Code are consistent with, supersede, or contradict old sources of administrative law, including the administrative offenses code, the Law on the Procedures for Reviewing Applications Complaints and Appeals in State Agencies, and other articles in existing legislation, including existing agency regulations; and also the extent to which they are consistent with, supersede, or contradict new laws (such as the new law on "normative acts"). The assessment should include an analysis of whether portions of the old administrative law

more appropriately belong in other legislation directed at more substantive areas. Based on the outcome of this assessment, design tasks that will assist the Georgians in harmonizing all aspects of administrative law – old and new – in order to facilitate orderly implementation of regulatory procedures.

c. Regulations

Work with a select group of targeted ministries to adopt administrative regulations consistent with the new Administrative Code, and amend Agency charters that are inconsistent with the new Code. This task should include distribution of model regulations that could be adapted for use by all agencies, with minor modifications needed for technical issues such as energy regulation or banking. This task will help ensure harmonization with the Administrative Code. Other USAID contractors could help develop the regulations and the ROL contractor could provide review and suggestions for meeting uniform standards.

d. Constitutional Review

A separate review should be conducted of the Constitution, in order to identify inconsistencies with other legislation, weaknesses, gaps, or vague language. This would help Georgia prepare for the process of amending the Constitution, and help avoid multiple amendment processes.

3. Training and Reference Materials

a. Judiciary

Provide judicial training in select priority subjects, such as commercial law *(CL Recommendation 2(a))*, basic business principles, judicial discipline and ethics, judicial skills, administrative law and human rights. The first step should be to conduct a full review (perhaps in a retreat venue), with the participation of EU, WB, SOROS, JTC, COJ, and all other relevant individuals and organizations involved in judicial training in Georgia in order to determine the capacity and scope of existing institutions in light of current and anticipated needs. A judicial training action plan that delineates roles and responsibilities for provision of judicial training for the next 5 to 10 years should be drafted among those participating.

b. Training of Trainers

A TOT program for judicial training needs to be in place, as this is one of the most fundamental prerequisites to a sustainable indigenous judicial training program. Training activities conducted by expatriates alone should be avoided.

c. Alternatives

If the JTC lacks sufficient capacity at this time, other training options could include:

i. A program of short (2-5 days) seminars and workshops led by expatriates, with Georgian experts, delivered over the course of four years to sitting judges in Tbilisi and outlying regions. In addition, USAID should attempt to take

advantage of visiting legal experts on temporary duty for other assignments, by including extra days in their contracts for one or two-day seminars on topics of interest.

ii. Use study tours to expose Georgian judges to western models and courses. Care should be taken to select participants fairly, and study tours should be designed to maximize the potential for learning while minimizing waste and redundancy. Over time, a broad and representational body of judges should be included in study tours.

iii. A "mobile" unit of Georgian trainers comprised of judges or multi-disciplinary teams, with expatriate assistance, who can provide extension training to judges, on an as-needed basis at a low cost. This program could extend the pilot activity developed by USAID's ROL contractor, AMEX, to provide one or two-hour "brown bag" sessions for judges on topics of interest. Programs of this nature should be developed and implemented in partnership with a Georgian counterpart, such as the JOG or JTC.

iv. Develop a small commercial law center in the USAID-funded banking training center in Tbilisi, to focus on select courses for judges, lawyers and other legal professionals. A small library of commercial law materials could be concurrently developed. A plan for extending training to outlying regions will need developing.

With the exception of study tours, these training activities would require the development of modules that could be replicated and adapted. Any or all of these activities could be carried out in partnership with the JTC, to the extent it has the capacity.

d. Legal Professionals

Training of other legal professionals, such as legal assistants, notaries, marshals, and attorneys needs to be considered, and included in the donor/partners action plan. Develop training activities for such sub-sectors as needed. *(CL Recommendation 2(b))*

e. Evaluations

Any training activities should include a methodological approach for assessing the ongoing needs with frequent evaluations.

f. Lawyers

Provide training for lawyers in substantive areas of law, procedures, and skills related to advocacy (e.g., drafting pleadings, collecting evidence, developing arguments, etc.) This activity could be implemented in partnership with GYLA, other bar associations, or through other mechanisms but it will be imperative to develop this training program in collaboration with a Georgian partner in order to lay the foundation for sustainability**.**

g. Commercial Law

Training for lawyers on commercial laws and related procedures is critical. This activity could be incorporated into other training programs, or could operate as a stand-alone program. It could be included in the Commercial Law Training Center within the Banking Training Center, mentioned above as a possibility for provision of judicial training. (*CL Recommendations 2(b)(c)).*

h. Criminal Law

A separate feasibility study should be undertaken for exploring options for training and strengthening the sub-sector of criminal defense attorneys. Care should be taken to consider both the public and private sector when designing a program for criminal defense attorneys, given the existence of the Collegium of Advocates, its link to the Ministry of Justice, and its significant role in the provision of public-supported defense.

i. Legal Drafting

Legal drafting training must be provided for the legislative (laws), executive (regulations), judicial branches (decisions) and private attorneys. The issue turns on whether to have a stand alone legal drafting activity for all legal professions or have a legal drafting component integrated into the training programs designed for a particular sector.

j. Georgian/English Legal Glossary

Produce a glossary of English\Georgian legal terms, with Georgian translations. This could build on the work done by the Academy for Educational Development and AMEX. Soros may be working on a similar project and duplication of tasks must be avoided. In particular, ambiguous, vague or misused terms such as: judicial independence, public defender or defender, ombudsman, expertise, human rights, and corruption need to be defined.

k. Sources of Legal Information

A review should be completed of existing and planned databases, libraries, and other publications, public or private, that contain information on laws, decrees, regulations, court decisions, commentaries and other legal analyses, and manuals. This review should lead to a regularly updated donor matrix of commentaries, manuals, laws, dictionaries, glossaries, and databases related to legal subjects.

l. Libraries and Databases

Based on the findings of the review of sources of legal information, support development of databases or libraries, in courthouses and other venues, to help meet the demand by legal professionals for current and accessible information. A system for comprehensive distribution of the important judicial decisions would be useful. The idea of establishing regional law libraries should also be explored. Development of databases should include a database for all government regulations.

m. Commentaries and Manuals

To complement *ROL Recommendation 3(l)*, support the preparation, publication and distribution of commentaries, manuals and other source materials to understand the law and obtain guidance regarding its application for legal professionals, particularly judges and lawyers. This is especially recommended in the area of Commercial Law. (*CL Recommendation 2(c))*.

n. Information Technology

Parliament's local area network (LAN) needs to be expanded to cover all the committees. Targeted government agencies and courts, in the regions in which USAID has activities, require computer and peripheral equipment and software programs adapted to Georgian needs.

4. Institutional Development/Capacity Building

a. Judicial Independence

Sponsor a forum to clarify the meaning of judicial independence in Georgia. Georgian and expatriate organizations involved in judicial reform should try to reach consensus on how Georgians define judicial independence, in order to promote a common understanding of Georgia's goals and criteria in this area. Once developed, these principles could be included in appropriate legislation or charters. They could be used as a checklist, to periodically rate Georgia's progress in reaching and maintaining judicial independence. The JOG would be an appropriate Georgian counterpart for this exercise.

b. Developments in the Legal System

A similar dialogue could be started on the issue of how Georgian see their legal system developing. Reconciling some of the conflicts between civil law and common law approaches could help reformers clarify the role of courts and bring more consistency to court decisions.

c. Judicial Administrative Responsibilities

A related and important task is to help the institutions charged with judicial reform clarify their respective roles and responsibilities, such as managing the court budget, overseeing judicial training and education, enforcing judicial discipline and ethics, advocating on behalf of judicial interests, and pursuing other goals associated with judicial independence and reform.

d. Judicial Recruitment

Continue to support the COJ in its role as administrator of the judicial qualification examinations. A review of the current schedule of examinations should be conducted in light of the number of seats that are vacant and anticipated rates of attrition over time, in order to stabilize the examination process. Attention should also be given to other stages of judicial

qualification, such as the competition for positions, the vetting/placement process, and character review in order to ensure that all phases of judicial qualification are fair and transparent.

e. Court Budget Survey

To address the issue of salaries, conduct an analysis of the entire court budget. The analysis would examine allocations and expenditures, to reveal "ghost employees" and other areas of waste, fraud or abuse. The objective is to see if salaries can be increased without the need for additional allocations.

f. Harmonization of Judicial Practice

Assist the Supreme Court and the District Court Appellate Chambers. Assistance could focus on developing common methodologies in reaching and presenting court opinions and developing rules or guidelines for reviewing cases on appeal (e.g., whether cases on appeal should be argued again in their entirety, or whether review should be restricted to questions of judicial error below).

g. Judicial Networking

Establish a judicial exchange and networking program in which Georgian judges and judges from Central and Eastern Europe would have a forum to promote horizontal cooperation.

h. Process Mapping

Undertake process mapping (institutional assessment) for targeted agencies that need to implement administrative regulations, in order to assist that office in the process of following step-by-step procedures for establishment of regulations consistent with the Administrative Code and Administrative Procedure Code.

i. Civil Service/Administrative Reform Working Group

Provide assistance to establish a secretariat with a small staff.

j. Administrative Code Advisory Board

Provide assistance to Administrative Code Advisory Board. This Board has the potential to challenge and begin to change firmly established attitudes about the role of government in the lives of citizens, and the extent to which government should be accountable to society. This activity recognizes that the executive branch must embrace a correction to the imbalance of power between the bureaucracy and the populace, which will require a public endorsement of tough-minded reforms in the arena of administrative law. (*CL Recommendation 4(b))*

k. Bar Examinations

After a law on the bar is passed, and assuming it provides for attorney qualification exams, support activation of the licensing requirement for lawyers. Assistance could include design

and administration of the bar exam, based on the successful experience with the judicial qualification examinations.

l. Law School Accreditation

Once licensing for lawyers is activated and underway, consider an initiative to reform law schools by introducing accreditation standards. However, it is unlikely that Georgia will be ready for this step in the immediate or medium term.

m. Anti-corruption Working Group

Continue participation on the Georgian Anti-Corruption Working Group, and add to the working group a representative from USAID's Office of Economic Restructuring.

5. Public Awareness/Access to Justice

a. Awareness Campaigns

Conduct awareness campaigns to inform targeted interest groups and/or the public of specific laws. The campaign will inform people how they can use and benefit from the law. When publicizing the laws, concrete examples of success stories should be presented. A variety of mechanisms could be pursued, such as announcements and articles in mass media, hotlines, hosting a web-site or chat room, arranging workshops for journalists and/or targeted groups, and publishing pocket cards or brochures.

b. Court Monitoring

Establish a court monitoring activity that would be implemented on the ground by qualified NGOs and/or business associations (for commercial law cases). The activity could be restricted to the courtroom, or could extend beyond the courtroom to monitor enforcement of civil and administrative judgements. This activity needs to be developed carefully. Strict criteria must be in place, activities must be carefully reviewed by USAID, and procedures should be in place for the selection and training of monitors. Questions of administration will need to be addressed, such as how court monitoring by unrelated NGOs is coordinated; how results will be compiled and reported; and what will be done with the data. While shining a light on possibly improper judicial activities, it would assist the judges in reporting accurately on court decisions. Many erroneous stories appear in the press – often intentionally.

c. Bar Poll

Conduct a Bar poll that periodically queries lawyers, advocates, notaries, procurators and other legal professionals on the progress of judicial reform and the performance of judges. As a follow-up to the poll, a conference could be held to devise solutions to the problems identified.

d. Legal Services

Support for providers of legal services in the area of human rights and possibly non-commercial civil law cases.

e. Clinical Programs

Support or help establish legal clinical programs run by NGOs such as CPCR and Article 42 that use law students. Efforts should be made to help the NGOs reach formal agreements with law schools so that participating students can receive practicum credit for clinic work. Care should be taken to ensure that all law students are supervised by law professors or clinic lawyers when engaged in client representation. Clinics could be specialized, depending on the region and the NGO.

f. Test Cases

The potential for pursuing test cases or cases of major significance should be seriously reviewed. For example, lawyers with legal advocacy NGOs could be selected for training and assistance in bringing claims in the Constitutional Court, including "class-action"- type claims. The GYLA chapter in Rustavi could sponsor a clinic that focuses on cases of police/procuratorial abuse, since they have developed a substantive expertise in this area, and focus on taking on cases with widespread significance. Also, a special initiative could entail targeting cases with good potential for testing the new Administrative Code.

g. City Attorneys

Support GYLA in the management of the Tbilisi City Attorney program.

h. Constitutional Court

Assistance to the Constitutional Court should be delayed, pending progress on improving access to the Court through streamlined procedures and initiatives to promote use of the Court for viable claims by competent counsel.

i. Ombudsman

If the new Ombudsman is a strong advocate for human rights, explore means of collaboration with UNDP to support this office, as it has the potential to publicly profile in Parliament, through the media, and other fora problems and solutions in this arena.

B. Commercial Law Recommendations

1. Completion and Important Refinements of Legislative Framework

a. Personal Property Registry

Set up a registry for personal property; associated analysis and establishment of lien priorities, collateral filing requirements and consideration of whether filing should be required for more security interests in personal property. Increased filings would provide greater protection for lenders and potential business partners by providing public notice of

encumbered property. Such filings would also provide a record for notifying those with an interest in property when such property is proposed to be disposed of - whether to satisfy a court decision, in connection with bankruptcy proceedings, and in other circumstances.

b. Bankruptcy

Assist in drafting and enacting bankruptcy amendments (including those providing for supervisory mechanism for bankruptcy administrators), standard forms and outreach. If bankruptcy gains greater acceptance, regulations may be appropriate. There is a group of Georgians who have begun working on amendments and some amendments have reportedly been submitted to Parliament. GTZ has reportedly provided some assistance regarding certain draft amendments to the bankruptcy code, however, it appears that USAID assistance will be appropriate to assist the identification and preparation of amendments. (*ROL Recommendation 2(a))*.

c. Harmonization and Clarification

Oversee harmonization of laws; clarification of important existing provisions; and preparation of amendments necessary to implement legislative reforms (see discussion in Rule of Law section above). Both assessment results and regional experience establish that some needs exist in this area and will arise over time, This is particularly likely in the case of the Civil Code, due to its breadth in governing many basic commercial transactions. For example, the Civil Code does not recognize electronic communications (e-trade confirmations) for valid obligations. This should be an area where a contractor is available to provide assistance as and when needed, in addition to the collateral and bankruptcy areas noted above. (*ROL Recommendation 28*).

d. Acquiring and Liquidating Property

Assist with drafting and enacting amendments to the Civil Code, Civil Procedure Code and other laws that will facilitate lenders and others acquiring and liquidating property in an efficient manner. It appears that a useful task will include the contractor - in coordination with Booz/Land Privatization, Booz/Banking, other appropriate assistance providers, and the local banking community (suggest working group here) - assisting in identifying impediments to the acquisition and liquidation of collateral and assisting in the preparation of necessary changes.[17] (*ROL Recommendation 2(b)*.

e. Procurement Law

Provide assistance (as necessary) to cause the government procurement law to satisfy WTO standards, by setting forth provision for international procurements. Anticipated WTO date for effectiveness of such a law is December 31, 2000. (*ROL Recommendation 2(b)*

[17] Booze/Land Privatization is not doing any work to assist in the implementation of the law on mortgage foreclosure. Although it has published a handbook for individuals who wish to mortgage their property. Booz is doing daily face-to-face training for 30 enterprises on how to file ownership documents in connection with privatization. Finally, Booz has prepared a handbook to help agricultural landowners register land.

f. Business Regulation

Simplification (ongoing) of business regulation: registration/licensing/other. This task will integrating with the SME activity. The SOW provides for legislative technical assistance, as and when necessary to complement the new SME activity. Depending on whether SME priority, could assist in developing central registry of information regarding business registration as all registrations are currently at local and regional courts where the business is based. The International Chamber of Commerce has also proposed centralizing the business registration registry.

g. Leasing Law

The GOG has not demonstrated to date interest in legislation governing financing leases. It is not clear that the business community has a particular interest in a financing lease law. However, assistance may be appropriate where there is political will and identification of what the particular products likely to be provided under finance leasing are. The new SME activity may be used to gauge SME demand for additional legislation in this issue, including providing the statutory framework for leases and financing leases

h. Franchise Law

Same points as leasing law. The new SME activity may be used to gauge SME demand for additional legislation in this area.

2. Training and Reference Materials

a. Judges

Judges, who are charged with interpreting laws and adjudicating matters, must understand the new laws in order to apply them properly to specific factual cases. Training should include useful hand-outs to assist judges until commentaries and manuals[18] are available. This is particularly important as there are a limited number of experts in Georgia who have knowledge of the new laws to prepare commentaries and manuals.[19] Although the World Bank and EU/TACIS plan to support the JTC in its development and delivery of curricula, it is unlikely that their assistance will extend to all priority commercial law areas. Particularly important subject areas that will not be covered by any modules generally covering the civil code include: bankruptcy, the Law on Entrepreneurs, the securities law, tax law, banking law, and the Administrative Code. Judges will need to understand collateral law, bankruptcy law, foreclosure law and applicable provisions of the Civil Procedure Code, all as they relate to the execution of decisions to acquire and/or liquidate real and personal property. (*ROL Recommendation 3(a)(b)(c))*

b. Legal Profession

[18] As used in this assessment, and as apparently referred to in Georgia, "manuals" include practical instruction regarding how the law is intended to apply to particular situations.

[19] According to AMEX, the preparation of commentaries in its work plan – specialized obligations and licensing law – have been delayed due to the death of the Georgian experts working on those commentaries and the difficulty in finding experts to continue the work.

Advocates, jurist consultants (similar to in-house counsel), notaries, bankruptcy administrators, and marshals will also require training in commercial law. In particular, marshals will need training in collateral law, bankruptcy law, foreclosure law and applicable provisions of the Civil Procedure Code, all as they relate to the execution of decisions to acquire and/or liquidate real and personal property. The World Bank and/or GTZ may be providing assistance in training marshals on certain topics. Notaries, among other things, determine that contracts to be notarized comply with law. As they have a legal education, they can be included in various training programs with lawyers.

c. Legal Source Material

Legal professionals, particularly judges and lawyers, require commentaries, manuals and other source materials to understand the law and obtain guidance regarding its application. Support should be provided for the preparation and distribution of the following secondary source materials:

- Law on Entrepreneurs – manual to supplement the existing commentary
- Tax Code – commentary or manual
- Securities law – commentary or manual
- Banking law – commentary or manual
- Civil Code – manuals on property, general obligations and special obligations.

In addition, to the extent that AMEX International does not complete the preparation of commentaries and other materials which it is scheduled to complete prior to the expiration of its contract, especially the bankruptcy practitioners guide, support for the preparation of such materials will need to continue. (*ROL Recommendations 3(m)*).

d. Arbitrators

Training arbitrators who will conduct arbitration proceedings under the arbitration subsidiary being established under the Barents/Capital Markets project to hear securities-related disputes. This training is reportedly not included in Barents' project.

3. Public Awareness

a. Business Community

Assist in building public awareness of reforms, especially to the business community. The public, and businesses in particular, need to understand commercial laws, including the rights and obligations that they impose. Public outreach efforts to businesses regarding reforms should contain practical and specific information regarding reforms and emphasize, where possible, expected benefits to business from the reforms. (*ROL Recommendations 14-15*)

4. Institutional Development/Capacity Building

a. Property Registry

Provide institutional strengthening associated with bodies who implement and administer laws – particularly, collateral registry, company registries. This includes technical assistance to the body responsible for the registry to support the establishment of a filing system and procedures for its transparent and efficient operation.

b. Administrative Code

In the case of the executive agencies who are significant counterparts to USAID ER Office, the respective contractors under these activities should be able to provide technical assistance in this area. For example, Barents/Tax and Fiscal and Barents/Capital Markets can assist the tax and securities administrations in establishing procedures that comply with the applicable provisions of the Administrative Code. Due to the progress of Barents/Capital Markets to date in assisting to establish the securities exchange, on which trading is anticipated to commence before 12/31/99, this may require minor additional assistance by Barents/Capital Markets. (*ROL Recommendation 2(b))*.

c. Fees

Additional item outside program design. The Mission may wish to include in the new SME activity, or otherwise procure, an analysis of court filing fees, enforcement fees and notary structure to gauge their potential for deterring on SME growth. This may be appropriate to include in new SME activity

5. Quick Starts

These are small activities that the team believes could be implemented over the next six months, mostly accessing contracting mechanisms already in place. Items marked with an asterisk do not require any additional funding or contract vehicles.

a. Tax Code Review

AmCham and Barents/Tax & Fiscal are cooperating in Barents' review of the tax code.*

b. Law on Entrepreneurs

Barents/Capital Markets will be contacting AmCham to discuss AmCham concerns regarding specific provisions of the Law on Entrepreneurs. *

c. Taxpayer Procedural Rights

As part of its public outreach work, Barents/Tax and Fiscal can conduct public information effort regarding taxpayers' procedural rights regarding the freezing and transferring of funds on deposit in bank accounts. For example, it appears based on advice from Barents/Tax and Fiscal that (1) a taxpayer should receive a collection order before funds can be transferred and (2) the taxpayer has the right to appeal the notice (initially within the tax administration) prior to the transfer of funds. Barents/Tax and Fiscal will need to coordinate with the new Booz/Banking project to determine the extent to which banks face fines or are under other pressure to approve quickly funds transfers.*

d. Basic Business Practices

Initial judicial training on basic business practices. Combine forms of business organization (law on entrepreneurs), types of transactions, some accounting (*Rule of Law Recommendation 3(a))*.

e. Anti-corruption Working Group

Add an Economic Restructering member to the Anti-Corruption Working Group.*

f. Bankruptcy

Assistance with preparation of amendments, building on AMEX's recent work regarding bankruptcy. [Note: USAID should (1) determine if bankruptcy code reform is likely to be a significant priority prior to Presidential elections and (2) absorptive capacity of AMEX to perform this work]. The assistance should incorporate relevant suggestions of the short term (approximately one month) bankruptcy expert who will be reviewing the voluntary liquidation procedures under the bankruptcy law as part of the Office of Economic Restructuring's privatization assistance.

g. Collateral Registry Design and Collateral Law Assessment

Short term technical assistance to provide design suggests for the unified registry. The consultant would, among other things, (a) determine possible institutional bodies where the registry might be based, (b) assess current filing requirements for liens on movable and immovable property, (c) determine major areas of collateral, mortgage and bankruptcy law that may need revision to clarify and establish the rights of competing lien-holders, and (d) initially identify process requirements (e,g, adequacy of notice of disposition, sales price floors) that may limit the efficient disposition of collateral. Part (c) would also include an analysis regarding whether current law adequately deals with the rights regarding immovable property where the rights are separate from the ownership of the underlying land. One vehicle for this technical assistance may be a tier one contract under SEGIR Legal and Institutional Reform.

h. Task Identification

Leverage onto SME initial meetings for business outreach and to identify priority concerns. This provides a way to jump-start onto important demand areas that may require additional technical assistance.

i. Translation of Civil Code

OER review of AMEX English language translation of Civil Code to be completed prior to expiration of AMEX's contract, do determine that the translation can be used by foreign investors.